

## STATE OF VERMONT

## HUMAN SERVICES BOARD

In re ) Fair Hearing No. 13,221

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Appeal of )

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INTRODUCTION

The petitioner appeals the decision by the Department of Social Welfare denying his application for Medicaid. The issue is whether the petitioner is disabled within the meaning of the pertinent regulations.

FINDINGS OF FACT

1. The petitioner is a thirty-one-year-old man who has a high school education and a fairly uninterrupted ten year work history dating back to the time he was nineteen years old. His first job was as a saw feeder which he did for three and one-half years, after which he was a lumber handler for a couple of months, a storeroom attendant for three and a half years, a gas station attendant for almost three years and finally as a pick-up truck driver for a news agency for six months. All of these jobs required the petitioner to stand on his feet for long periods and to lift and carry moderate weights of from thirty to sixty pounds.
2. In November of 1993, the petitioner was diagnosed as having non-insulin dependent diabetes mellitus. During the next few months, the petitioner was treated for a number of severe problems, although he continued to work. In December of 1993 he was hospitalized for three days following a drug overdose he took in reaction to his wife's sudden desertion of him. Later that same month, he was hospitalized for nine days for deep venous thrombosis in his right leg and calf but that problem completely resolved in a couple of months.
3. During the first eight months of 1994, the petitioner saw his physicians on an almost monthly basis and had a number of problems, including continuing depression and increasingly worse neuropathy in his legs and feet. By August of 1994, he was taking insulin and amitriptyline on a regular basis in spite of worsening foot pain that made it difficult for him to sleep or work. He was treated in an emergency room on two occasions in August of 1994, for symptoms of fatigue and weakness relating to uncontrolled blood sugars.

4. The petitioner felt that he was unable to continue his truck driving job and quit, or was fired, in August of 1994, and did not work again, although he tried to get a job in a gas station somewhat later. He was turned down for that job because of his medical condition.

5. In the Fall of 1994, the petitioner continued to see a doctor for control of his diabetes and was instructed on use of insulin shots. These shots were administered to him every day by his then girlfriend. (They subsequently married in January of 1995, following the finalization of his divorce from the wife who abandoned him.) He has not seen a doctor since that time nor has he ever consulted with a mental health professional.

6. Since that time the petitioner has become a recluse. He stays most of the time in his house fearing interaction with people and trips into stores and supermarkets. He has experienced weight loss, pain in his stomach and fatigue as well as intensified pain in his feet often accompanied by swelling. He also experiences cluster headaches about once per month. He can walk without pain for about twenty to thirty minutes, and stand for about an hour. His ability to sit is not affected by his illness.

However, he has difficulty persisting in activities due to pain, fatigue and crying spells. He takes Amitriptyline for depression and Insulin and Dilantin for his diabetes and associated problems. He often awakes in pain at night and is most comfortable when sitting in a recliner. The petitioner's testimony is found to be entirely credible based on his demeanor, the supporting medical evidence and his prior history of regular engagement in work activities.

7. Following his application for Medicaid, the petitioner was interviewed by a psychologist who prepared a report on May 23, 1995. That report indicates that the patient now walks with a slight limp and is attempting to participate in the control of his diabetes. In spite of average intelligence and reasonably good communication skills, the psychologist noted that the petitioner had difficulty concentrating and understanding difficult directions. He noted and credited reports from the petitioner that he had crying spells, was subject to moodiness and only felt safe in his own home. He diagnosed the petitioner as having depression with a possible panic disorder which is secondary to the diabetes "which is physically debilitating for him." He concluded:

I suspect that if [petitioner] had not been diagnosed with diabetes, he would still be working, so it is not strictly emotional factors which are preventing him from working although they are not contributing to his marginal competence . . . If there is improvement in his physical condition, I expect that his mental condition will improve as well.

8. The medical evidence and credible testimony of the petitioner indicate that due to a combination of severe medical impairments, he has been unable since August of 1994, to do even a sedentary job based on fatigue, pain, phobias and an inability to concentrate. He has demonstrated that he does not have the residual functional capacity to engage in any substantial gainful employment and has not for at least twelve months. He can neither engage in his former employment nor any other employment in the national economy.

### ORDER

The Department's decision is reversed.

### REASONS

Medicaid Manual Section M211.2 defines disability as follows:

Disability is the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment, or combination of impairments, which can be expected to result in death or has lasted or can be expected to last for a continuous period of not fewer than twelve (12) months. To meet this definition, the applicant must have a severe impairment, which makes him/her unable to do his/her previous work or any other substantial gainful activity which exists in the national economy. To determine whether the client is able to do any other work, the client's residual functional capacity, age, education, and work experience is considered.

The petitioner has a combination of severe impairments which has prevented him from engaging in substantial gainful activity for at least one year. As such, he meets the definition of disability for Medicaid. The petitioner should note that the medical evidence indicates that his disabilities have a chance of resolving with treatment. He is required as a Medicaid recipient to seek and follow medically prescribed advice or risk losing his benefits unless he has a good reason for failing to do so. See 20 C.F.R. § 416.930.

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